

S.B.Civil Second Appeal No.109/2004.

Niranjan and another.

vs.

Smt. Kanku Bai.

Date : 13.4.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. DR Bhandari, for the appellants.

Mr. DR Kawadia, for the respondent.

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Heard learned counsel for the parties.

The present second appeal is because of the reason that the trial court decreed the suit of the plaintiff/respondent, mother of defendant no.1/appellant no.1, for possession. This decree was affirmed by the first appellate court.

The plaintiff, unfortunate mother of the appellant no.1, filed suit for possession alleging that the suit property, originally a plot, was purchased by her by registered sale deed dated 5.5.1970. She constructed house over it. The defendant no.1 is her youngest son and the defendant no.2 is wife of defendant no.1. Before the suit was filed, even a complaint under

Sections 107 and 116 Cr.P.C. was filed by the plaintiff against her son alleging that he gave grave and severe beating to her. Be it as it may be, the plaintiff, therefore, did not want to keep his son and daughter-in-law with her and, therefore, filed the suit for possession.

The defendants in their written statement pleaded that in fact, the plot was purchased from the gift given by the maternal grand father of defendant no.1 at the time of his birth. The defendant no.1 also pleaded that he in fact constructed the house by taking loans from various persons and including from the Bank. It was also pleaded that even the sale deed dated 5.5.1970 was a benami transaction and in fact, the plaintiff is not owner of the property.

Two courts below considered the evidence of both the parties and thereafter observed that the defendant no.1 himself in his cross examination admitted that at the time of purchase of the plot in the year 1970, he was of the age of 11 years only. Two courts below after considering the evidence of DW3 Prabhulal, DW4 Kachrulal, DW5 Nanalal and DW6 Lachiram and clearly held that even if there was any settlement between the parties by which the plaintiff agreed to pay Rs.1,50,000/- to the defendant no.1, then that was only

because of the reasons that the plaintiff wanted to get rid of the dispute. Two courts below clearly held that the defendant failed to prove by evidence that he even paid any amount for construction of the house.

Learned counsel for the appellant submitted that the courts below has not considered the evidence of the defendant and his witnesses. But after going through the judgments of two courts below, this Court is of the view that two courts below carefully considered the evidence of the defendant and his witnesses and rightly reached to the conclusion that the defendant's evidence is absolutely frivolous and baseless.

In view of the above, I do not find any substantial question of law involved in this appeal. Consequently, this second appeal, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya